

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision denying its
4 request for conditional use approval for a public golf
5 course.

6 **FACTS**

7 The subject property includes approximately 182 acres
8 and is located in the county's General Agricultural District
9 (GAD), one of the county's exclusive farm use (EFU) zoning
10 districts. The subject property was once part of a 350 acre
11 farm unit, but portions of the original farm unit have been
12 taken for construction of the I-5 freeway and related
13 improvements.

14 Following two public hearings, the county hearings
15 officer conducted a site visit and thereafter entered his
16 decision denying the requested application. The hearings
17 officer found the proposal violates applicable Clackamas
18 County Comprehensive Plan (plan) provisions and provisions
19 of the Clackamas County Zoning and Development Ordinance
20 (ZDO).

21 **FIRST ASSIGNMENT OF ERROR**

22 "The hearings officer acted without legal
23 authority in applying unexpressed and unadopted
24 policies and standards as criteria for denying
25 petitioner's conditional use permit application."

26 Under this assignment of error petitioner contends the
27 hearings officer imposed an unauthorized, and therefore

1 improper, requirement that petitioner demonstrate there were
2 no suitable alternative sites that could accommodate the
3 proposed golf course. In support of this contention,
4 petitioner cites the following language from the hearings
5 officer's decision:

6 "[a]lthough there is a demonstrated need for
7 additional golf course facilities, there is no
8 evidence that such need must be met on prime farm
9 land such as the subject property." Record 13.

10 Petitioner contends there is no requirement under the
11 plan, ZDO, or state statute¹ that in seeking county approval
12 of a golf course on EFU zoned land an applicant must first
13 demonstrate that no suitable sites for such a golf course
14 exist on urban lands, nonagricultural rural lands, or on
15 agricultural lands of lesser soil quality. In short,
16 petitioner contends that under applicable county and
17 statutory standards, there is no requirement that it perform
18 the kind of alternative sites analysis the above quoted
19 portion of the hearings officer's decision suggests is
20 required for approval of the disputed golf course.

21 Respondent takes the position in its brief that an
22 alternative sites analysis requirement was neither intended
23 nor applied in the challenged decision.

24 The quoted language could be read to suggest that the
25 hearings officer believed other suitable sites, if

¹The statutes governing EFU zones appear at ORS 215.203 through 215.337.

1 available, should be utilized for golf course purposes
2 before the subject property is used for such purposes.
3 However, this language appears at the end of the portion of
4 the decision addressing plan Agriculture Goals. We address
5 petitioner's challenge to that portion of the decision
6 infra. Read in context, the quoted language does not
7 require that the applicant first show that no suitable sites
8 for the golf course exist inside the urban growth boundary,
9 on rural nonagricultural or on rural agricultural lands with
10 poorer quality agricultural soils.

11 The first assignment of error is denied.

12 **SECOND ASSIGNMENT OF ERROR**

13 "The hearings officer acted without legal
14 authority in applying aspirational comprehensive
15 plan goals and policies as a part of [a] balancing
16 test in denying petitioner's conditional use
17 permit application."

18 **THIRD ASSIGNMENT OF ERROR**

19 "The hearings officer's findings purporting to
20 balance comprehensive plan goals and policies do
21 not balance at all; rather, they conclude that
22 because the proposed use would allegedly conflict
23 with a single goal -- preservation of agricultural
24 lands -- the use is prohibited."

25 Golf courses are allowable as a conditional use in the
26 GAD district. ZDO 402.06(B)(7). Among the criteria that
27 must be satisfied to approve a conditional use in the GAD
28 district is a requirement that the county find the proposed
29 conditional use "[d]oes not conflict with the purposes [of
30 the GAD district]." ZDO 402.06(A)(3). The purposes of the

1 GAD district specified in ZDO 402.01 simply restate the plan
2 Agriculture Goals.² The plan Agriculture Goals are as
3 follows:

4 "[A.] Preserve agricultural lands.

5 "[B.] Protect agricultural lands from conflicting
6 uses, high taxation and the cost of public
7 facilities unnecessary for agriculture.

8 "[C.] Maintain the economic base of Clackamas
9 County and increase its share of the market.

10 "[D.] Increase agriculture income and employment
11 by creating conditions which further the
12 growth and expansion of agriculture and
13 which attract agriculturally related
14 industries.

15 "[E.] Maintain and improve the quality of air,
16 water and land resources.

17 "[F.] Conserve scenic and open space.

18 "[G.] Protect wildlife habitats." Plan 38.

19 The hearings officer found the proposed golf course
20 "fails, on balance, to satisfy the [above] Goals * * *."
21 Record 11. Specifically, the hearings officer found Goal A
22 is violated because the subject property includes high
23 quality agricultural soils and the proposal would convert
24 the subject property to a nonagricultural use. The hearings

²The plan Agriculture Goals also apply to the challenged decision because ZDO 1203.01(E) requires that conditional uses in all zoning districts comply with "the goals and policies of the Comprehensive Plan which apply to the proposed use." Therefore the standards imposed by plan Agriculture Goals A through G, quoted infra, are both plan and code standards. For convenience, we generally refer to the plan Agriculture Goals, as did the hearings officer.

1 officer found such conversion of agricultural land to
2 nonagricultural use directly conflicts with Goal A which
3 requires that agricultural lands be preserved.

4 Similarly, the hearings officer found that Agriculture
5 Goals C and D were violated because the golf course
6 "property will be removed from agricultural production,
7 thereby reducing agricultural income and employment, and
8 decreasing the agricultural economic base of the [c]ounty."
9 Record 12.

10 With one exception, the hearings officer found the
11 proposal is consistent with the remaining Agriculture
12 Goals.³ The hearings officer provided the following
13 rationale in concluding that the proposal conflicts with the
14 plan Agriculture Goals:

15 "In summary, on balance, this application is not
16 consistent with the Goals and Policies^[4] of the
17 Plan which are applicable. The proposal is

³The exception is plan Agriculture Goal B. However, in finding plan Agriculture Goal B is violated by the proposal, the hearings officer simply relied on his findings addressing ZDO 1203.01(D), a similarly worded standard. As explained infra, this matter must be remanded so that the evidentiary record may be opened to correct the procedural error petitioner alleges in its sixth assignment of error. In correcting the procedural error, the county may be required to reexamine compliance with ZDO 1203.01(D). Accordingly, we do not consider petitioner's challenges concerning plan Agriculture Goal B further.

⁴The hearings officer also cited several plan Agriculture Policies in reaching his decision. We discuss petitioner's arguments concerning plan Agriculture Policies 10 and 12, infra. The remaining policies cited by the hearings officer duplicate the standards imposed by the plan Agriculture Goals cited in the text and are not separately relied upon by the hearings officer as an independent basis for his decision. We do not consider these plan policies further in this opinion.

1 consistent with some applicable Plan provisions,
2 but it is in conflict with others. Most
3 importantly, it is in conflict with the provisions
4 of the Agriculture Sections of the Plan which deal
5 with preservation and protection of agricultural
6 lands. It is appropriate to balance those Goals
7 and Policies which are furthered against those
8 Goals and Policies which are in conflict in order
9 to reach a conclusion as to whether the proposal
10 is consistent overall. Any such balancing must be
11 done with the overriding policy of our land use
12 laws of this state and county to preserve
13 agricultural lands. Although there is a
14 demonstrated need for additional golf course
15 facilities, there is no evidence that such need
16 must be met on prime farm land such as the subject
17 property. In balancing the competing interests
18 and goals as to this application, this application
19 is in conflict with the most important of those
20 Plan provisions, and with the Plan as a whole."
21 (Emphasis added.) Record 13-14.

22 Petitioner argues that under plan Agriculture Policy 10
23 the county explicitly provides that "[EFU] zones shall be
24 used to implement agricultural policies." Plan Agriculture
25 Policy 12 directs that the county's EFU zones "shall provide
26 for Nonfarm uses as allowed by State Law." The statutes
27 establishing the requirements of EFU zones explicitly
28 provide for golf courses as conditional uses. ORS
29 215.213(2)(f); 215.283(2)(e). In accordance with these plan
30 and statutory provisions, ZDO 402.06(B)(7) expressly
31 provides that golf courses are allowable as a conditional
32 use in the GAD zoning district.

33 **A. Applicability of Plan Agriculture Goals as**
34 **Approval Standards**

35 Petitioner contends the hearings officer first erred in

1 this matter by applying the plan Agriculture Goals as
2 approval criteria. Petitioner contends ZDO 1203.01 only
3 directs that the county assure "[t]he proposal satisfied the
4 goals and policies of the Comprehensive Plan [that] apply to
5 the proposed use." Petitioner contends the more specific
6 policies that follow the plan Agriculture Goals are the only
7 plan agriculture provisions which apply. Petitioner
8 contends the command of plan Agriculture Policy 12 is
9 particularly relevant, and the plan Agriculture Goals relied
10 upon by the hearings officer should not be viewed as
11 applicable approval standards in view of that policy.

12 We have explained on numerous occasions that
13 determining whether particular plan provisions are approval
14 criteria applicable to land use permit decisions depends on
15 the language and context of the particular plan provisions
16 and land use regulations. See e.g. Stotter v. City of
17 Eugene, 18 Or LUBA 135, 146-47 (1989) (and cases cited
18 therein). There are two fatal problems with petitioner's
19 argument. First, there is nothing in the language or
20 context of the plan Agriculture Goals to suggest that they
21 were not intended to apply as approval standards. As
22 explained more fully below, if the plan Agriculture Goals
23 are properly interpreted and applied, there is no inherent
24 conflict between those goals and the more specific policies
25 that follow them. Secondly, as noted above, the plan
26 Agriculture Goals have been incorporated, word-for-word, at

1 ZDO 402.01 and made specifically applicable as approval
2 standards for conditional uses in the GAD district. ZDO
3 402.06(A)(3). Therefore, the same standards would apply
4 even if we agreed with petitioner that the plan Agriculture
5 Goals in themselves are not applicable.

6 The Agriculture Goals clearly were intended as approval
7 standards for conditional uses in the GAD district.
8 Petitioner's contrary argument is rejected.

9 **B. Interpretation and Application of Plan Agriculture**
10 **Goals**

11 Petitioner next points out the hearings officer
12 determined that three of the plan Agriculture Goals are
13 violated by the proposal. Having reached that conclusion,
14 the hearings officer proceeded to balance the proposal's
15 inconsistency with those goals, against its compliance with
16 the remaining goals. Petitioner contends there is no
17 authority in the plan or ZDO for applying an ad hoc
18 balancing of goals that are violated against goals that are
19 not violated to determine whether a subjective overall level
20 of consistency with the plan Agriculture Goals is satisfied.
21 Petitioner particularly objects to the hearings officer's
22 view that greater weight should be assigned to the plan
23 Agriculture Goals he found were violated.

24 In Rowan v. Clackamas County, ___ Or LUBA ___ (LUBA No.
25 89-154, May 9, 1990), aff'd 103 Or App 130 (1990), we
26 affirmed a county decision applying essentially the same
27 balancing approach that was applied by the hearings officer

1 in this case.⁵ The balancing approach applied by the county
2 in Rowan and in this case begins with the important
3 assumption that plan Agriculture Goals A, C and D
4 necessarily are violated by a conditional use which puts
5 agricultural land to nonfarm use. If such violations alone
6 require denial of any request for conditional use approval
7 for such nonfarm uses, the specific provision of
8 ZDO 402.06(B)(7) that such uses may be approved in the
9 applicable EFU zones is rendered a nullity.⁶ The balancing
10 approach followed in Rowan avoids this conflict.

11 The balancing approach followed in Rowan is not the
12 only way to resolve conflicts between code provisions which
13 specifically provide that a use is potentially allowable in
14 a zoning district and other code provisions that effectively
15 prohibit the use. In such circumstances, the latter code
16 provisions may be deemed not to apply to allowable
17 conditional uses because they presumably were not intended
18 to render the former code provisions a nullity. J.R. Golf
19 Services v. Linn County, 62 Or App 360, 661 P2d 91 (1983).

20 In J.R. Golf Services, the Court of Appeals resolved a

⁵The decision challenged in Rowan involved a request for conditional use approval of a private park in the county's EFU-20 zone.

⁶Petitioner also points out that if plan Agriculture Goals A, C and D are broadly interpreted as violated by any nonfarm use which removes any agricultural land from agricultural production or potential production, plan Agriculture Policy 12, which directs that statutorily authorized nonfarm uses shall be allowable in the county's EFU zones, is also rendered a nullity.

1 conflict between a zoning ordinance provision allowing golf
2 courses as a conditional use in the county's EFU zone with
3 other zoning ordinance provisions which precluded approval
4 of a golf course in the county's EFU zone, by holding that
5 the latter standards were inapplicable.⁷ The court held the
6 code language stood as an unavoidable barrier to ever
7 approving a golf course in the EFU zone.⁸ Compare Von
8 Lubken v. Hood River County, 106 Or App 226, ___ P2d ___
9 (1991), where the Court of Appeals concluded that while the
10 disputed plan criterion would severely limit the county's
11 ability to approve a golf course in its EFU zone, the
12 criterion would not totally preclude such approvals.

13 We agree with petitioners that J.R. Golf Services
14 provides the correct way to resolve a conflict between code
15 provisions that (1) specifically allow approval a nonfarm
16 use in an EFU zone as a conditional, but (2) establish
17 approval standards for such a use that prohibit its approval

⁷In that case the Court of Appeals accepted petitioners' arguments that certain standards contained in Linn County's code had the effect of precluding the possibility of approving a golf course in the EFU zone, although the Linn County code explicitly provided for golf courses as conditional uses in its EFU zone. In view of this conflict, the Court of Appeals concluded the county could not have intended the preclusive approval standards to render the provision allowing golf courses as a conditional use in the EFU zone a nullity. On that basis the Court of Appeals resolved the problem presented by the conflicting code language by concluding the preclusive standards were not applicable to requests for conditional use approval for golf courses. J.R. Golf Services, supra, 62 Or App at 364.

⁸One of the code standards in that case required that "[t]he use will not remove land suitable for agricultural or forest resource crop production." (Emphasis added.)

1 in all cases.⁹ The balancing approach we approved in Rowan
2 is flawed because it allows an otherwise applicable
3 criterion to be violated based on an essentially
4 standardless balancing rationale. Such an approach invites
5 the kind of ad hoc weighing of criteria that occurred in
6 Rowan, and in this case, and makes the decision making
7 process unpredictable. We conclude the more straightforward
8 resolution of such conflicts applied in J.R. Golf Services
9 is required where the kind of actual conflict between code
10 provisions that existed in that case is present. To the
11 extent our holding in Rowan is to the contrary, it is
12 overruled.¹⁰

13 However, we return to the initial and critical
14 requirement that is the predicate for finding a facially
15 applicable approval criterion is nevertheless inapplicable
16 to a particular permit decision. There must be an actual
17 conflict between the code provisions which renders
18 impermissible the use the local government intended to

⁹The conflict in J.R. Golf Services was between code provisions. In this case the conflict is both between code provisions and between plan provisions. We do not consider whether the principle stated in J.R. Golf Services would apply where the conflict is between a plan approval standard and a code provision authorizing a use. See Baker v. City of Milwaukie, 271 Or 500, 533 P2d 772 (1975).

¹⁰Our decision in Rowan was affirmed by the Court of Appeals without opinion. We therefore do not know whether the Court of Appeals' decision necessarily indicates agreement with the balancing approach we accepted in our decision in Rowan or whether the court affirmed our decision for other reasons.

1 permit. Unless a code approval criterion is such that it
2 precludes the possibility of approving a conditional use
3 that the code otherwise provides is potentially allowable,
4 there is no conflict. Without such a conflict, there is no
5 need to engage in balancing criteria, as was done in Rowan
6 and in this case, or to find a criterion inapplicable, as
7 was done in J.R. Golf Services, to avoid rendering other
8 code provisions a nullity. See Von Lubken v. Hood River
9 County, supra.

10 Where possible, it is appropriate to interpret zoning
11 ordinance provisions to avoid such conflicts. See Todd v.
12 Bigham, 238 Or 374, 393, 395 P2d 163 (1964); Clatsop County
13 v. Morgan, 19 Or App 173, 178, 526 P2d 1393 (1974); Foster
14 v. City of Astoria, 16 Or LUBA 879, 884-85 (1988); Forest
15 Highlands v. City of Lake Oswego, 11 Or LUBA 189, 193
16 (1984). For the reasons explained below, we believe the
17 disputed plan Agriculture Goals and GAD purposes may be
18 interpreted consistently with the plan and ZDO provisions
19 directing that golf courses may be allowed in the GAD
20 district.

21 It is possible to interpret plan Agriculture Goals A, C
22 and D to impose the kind of strict standard identified in
23 Rowan and by the hearings officer in this case.
24 Specifically, it is possible to interpret plan Agriculture
25 Goal A as being violated simply because some agricultural
26 land necessarily will be converted to nonfarm use.

1 Similarly, it is possible to interpret plan Agriculture
2 Goals C and D as being violated because the contribution to
3 market and agricultural income and employment that could
4 otherwise be realized by agricultural use of the land to be
5 occupied by the golf course will be lost.

6 However, we conclude it is also possible to interpret
7 those Goals as not imposing such an absolute standard. The
8 standards imposed by those Goals need not be interpreted as
9 applying to the land that necessarily will be removed from
10 or made unavailable for agricultural use to accommodate the
11 nonfarm use allowable under the zoning ordinance.¹¹ Viewed
12 in this way, the disputed Goals may apply to a proposed golf
13 course, but there is no unresolvable conflict between those
14 Goals and the ZDO provision specifically authorizing golf
15 courses in the GAD district. It is possible, for example,
16 that a proposed golf course might violate plan Agriculture
17 Goal A because it would occupy far more agricultural land
18 than is necessary for a golf course. See Douglas v.
19 Multnomah County, 18 Or LUBA 607, 622-26 (1990). Similarly,
20 a proposed golf course might violate plan Agriculture Goals
21 C or D if development of the golf course would have adverse
22 economic impacts on nearby agricultural land. However, the

¹¹We note that Statewide Planning Goal 3 (Agricultural Lands) also directs that agricultural lands be "preserve[d]." However, Goal 3 also requires that agricultural land be placed in EFU zones, and EFU zones allow a variety of nonfarm uses. Therefore when Goal 3 uses the word "preserve" it does not carry the expansive meaning applied to that word by the hearings officer in this case.

1 mere fact the golf course necessarily will occupy some
2 agricultural land, by itself, would not violate those Goals.

3 In summary, where there appear to be conflicting code
4 provisions such that a code approval criterion has the
5 effect of nullifying¹² another code provision which
6 specifically allows a use subject to that approval
7 criterion, the county should first consider whether the code
8 standard is sufficiently ambiguous that it can be
9 interpreted in a manner that avoids the conflict. If the
10 code can be interpreted to avoid the conflict, that
11 interpretation should be adopted. Where it is not possible
12 to interpret the code standard in a manner that avoids
13 nullifying a code provision specifically allowing a use
14 subject to that criterion, the county should interpret the
15 criterion as not applying to the use that would otherwise be
16 precluded.¹³

17 In this case, provided the county does not interpret
18 the above described plan Agriculture Goals and GAD purposes
19 as necessarily being violated simply because some
20 agricultural land will be occupied by the proposed golf
21 course, no conflict is presented. We therefore remand the
22 decision so that the county may apply a more limited

¹²By "nullifying" we mean precluding the possibility of ever approving such a use.

¹³The same interpretive principle would apply to conflicting plan provisions.

1 interpretation of the plan Agriculture Goals and GAD
2 purposes, as discussed above.¹⁴

3 The second and third assignments of error are
4 sustained.

5 **FOURTH ASSIGNMENT OF ERROR**

6 "The hearings officer's findings regarding
7 conflicts between the proposed use and the Aurora
8 Airport are internally inconsistent and apply
9 comprehensive plan goals and policies that are not
10 approval criteria."

11 The plan includes Rail, Air and Water Transportation
12 Goals and Policies (hereafter plan Transportation Goals and
13 Policies). One of the plan Transportation Goals is as
14 follows:

15 "[D.] Minimize conflicts between airports and
16 other uses."

17 Plan Transportation Policies are broken down into specific
18 policies for "Rail", "Airports," and "Water Transportation."

19 Plan Transportation Airport Policy 6.0 provides as follows:

20 "Cooperate with regulatory agencies to minimize
21 conflicts between airports and other uses."

22 The hearings officer adopted the following findings in
23 support of his conclusion that the above plan Transportation
24 Goal and Policy are violated by the proposed golf course:

¹⁴To clarify, we only decide in this opinion that it is incorrect to interpret the plan Agriculture Goals and GAD purposes as being violated simply because the golf course will necessarily occupy agricultural land. Short of that extreme interpretation, which we reject, it is for the county to explain how it interprets the plan Agriculture Goals and GAD purposes in the first instance.

1 "The Rail, Air and Water Transportation Section of
2 the Plan is also pertinent. It contains a Goal to
3 minimize conflicts between airports and other
4 uses, and accompanying Policy 6.0 to cooperate
5 with other agencies to minimize conflicts between
6 airports and other uses. As discussed above,
7 there are conflicts between the Aurora State
8 Airport and the proposed use. Although mitigation
9 measures are available to lessen these conflicts,
10 the record clearly establishes that the best use
11 of this property to minimize conflicts is the
12 current agricultural use. This application
13 conflicts with this Goal and Policy." Record 13.

14 Petitioner contends the above findings show the
15 hearings officer misconstrued the legal requirement imposed
16 by the above quoted plan Transportation Goal and Policy.
17 Petitioner also contends the findings quoted above are
18 inconsistent with findings adopted elsewhere in the hearings
19 officer's decision.

20 As an initial point, although we agree with petitioner
21 that the hearings officer incorrectly interpreted and
22 applied plan Transportation Goal E, we reject petitioner's
23 position that the goal is not an approval criterion. As
24 explained earlier in this opinion, ZDO 1203.01(E) requires
25 that conditional uses must comply with the goals and
26 policies of the plan. The disputed plan Transportation Goal
27 plainly requires that in approving conditional uses such as
28 the proposed golf course, the county must "minimize" any
29 impacts on airports. The language and context of the plan
30 provision permit no other conclusion than that it is an
31 approval criterion.

1 With regard to plan Transportation Airport Policy 6.0,
2 we believe it imposes an obligation on the county to
3 "cooperate" with relevant agencies in the proceedings below,
4 but there does not appear to be any dispute that the county
5 "cooperated" with the State Aeronautics Division.
6 Petitioner contends the county made favorable comment by the
7 Aeronautics Division a "prerequisite to the approval of
8 [the] conditional use permit." Petition for Review 21. We
9 do not agree the county imposed such a prerequisite. The
10 county simply cooperated with the Aeronautics Division, as
11 plan Transportation Airport Policy 6.0 requires.

12 Turning to petitioner's argument that the county
13 improperly interpreted plan Transportation Goal E to require
14 more than the goal requires, we agree with petitioner that
15 the above findings demonstrate the hearings officer
16 incorrectly interpreted and applied the goal. As petitioner
17 points out, the goal only requires that conflicts be
18 "minimized" not that they be "eliminated." Petition for
19 Review 20. The hearings officer first noted the existence
20 of conflicts. He then found mitigation measures are
21 available to lessen (i.e. mitigate) these conflicts.¹⁵
22 However, the hearings officer nevertheless concluded the
23 plan Transportation Goal and Policy were violated based on a

¹⁵Findings elsewhere in the challenged decision address the State Aeronautics Division's concerns in detail and conclude that, with conditions of approval, impacts could be adequately mitigated.

1 requirement that is not expressed in either the goal or the
2 policy, viz, that another possible use of the property
3 (agricultural use) would have fewer or less severe
4 conflicts. We interpret the hearings officer's findings
5 to determine that the identified conflicts between the
6 Aurora Airport and the proposed golf course can be
7 minimized, provided certain conditions of approval are
8 imposed. Upon reaching that conclusion the hearings officer
9 should have found plan Transportation Goal E is satisfied
10 and imposed the required conditions of approval. We do not
11 interpret the plan Transportation Goal requirement that
12 conflicts be minimized as including a requirement that the
13 county permit only the use that will have the fewest or
14 least severe impacts. Because the hearings officer's
15 decision is based on an erroneous assumption that the plan
16 Transportation Goals and Policies impose that requirement,
17 we sustain this assignment of error.

18 The fourth assignment of error is sustained.

19 **SIXTH ASSIGNMENT OF ERROR**

20 "The hearings officer violated Clackamas County
21 Zoning and Development Ordinance Section 1303.05E.
22 and 1303.09C. by inspecting the site alone and
23 taking official notice of disputed facts, without
24 notifying petitioner prior to the final decision,
25 and without affording petitioner an opportunity to
26 contest the facts so noticed."

27 In our Order on Motions to Strike and for Evidentiary
28 Hearing and Petition for Deposition in this matter, dated
29 July 26, 1991, we concluded that the hearings officer erred

1 by conducting a site visit after the close of the local
2 evidentiary record. That site visit was conducted without
3 prior notice to the parties and without an opportunity to
4 rebut the observations that were made and relied upon by the
5 hearings officer in the decision challenged in this appeal.
6 For the reasons expressed in our July 26, 1991 order, the
7 sixth assignment of error is sustained.

8 **FIFTH ASSIGNMENT OF ERROR**

9 "The hearings officer's conclusion regarding
10 alteration of the character of the surrounding
11 area and the effects of this alteration of farm
12 uses are not supported by adequate findings."

13 **SEVENTH ASSIGNMENT OF ERROR**

14 "The Hearings Officer's findings are not supported
15 by substantial evidence in the record as a whole."

16 Petitioner's remaining assignments of error allege
17 inconsistencies and inadequacies in the hearings officer's
18 findings and lack of substantial evidence to support the
19 decision.

20 Because this case must be remanded in any event, we do
21 not consider petitioner's evidentiary challenges or its
22 challenges to the findings adopted based on the current
23 evidentiary record. The county's decision is remanded.